H.R. ____, THE FINANCIAL ANTI-TERRORISM ACT OF 2001

GENERAL THEMES

- We must enhance the ability of law enforcement agencies to identify and attack the financial infrastructure of terrorist and other criminal organizations, by giving them stronger tools for combating international money laundering and requiring greater interagency coordination and information exchange.

- We must also do a better job of facilitating cooperation and information exchange between the government and the financial services sector, to ensure that suspicious financial activity that may be related to terrorism is identified and investigated in "real time," and that financial institutions are effectively enlisted in the fight against global terrorism.

- We should also address the well-known money laundering vulnerabilities associated with off-shore secrecy havens and other countries that refuse to cooperate with U.S. law enforcement efforts to track terrorist assets and the proceeds of other criminal activity.

SECTION-BY-SECTION ANALYSIS OF H.R. ____, THE FINANCIAL ANTI-TERRORISM ACT OF 2001

TITLE I. STRENGTHENING LAW ENFORCEMENT

Section 101. Bulk Cash Smuggling Into or Out of the United States

This section makes it a Federal crime, punishable by up to 5 years in prison, for anyone to knowingly conceal more than $10,000 in currency or other monetary instruments on his person or in any conveyance, article of luggage, merchandise or other container, and to transport or attempt to transport that currency across the border with the intent to avoid the requirement that such currency be declared to Customs inspectors.

The section also authorizes the confiscation of the smuggled money in accordance with the usual procedures for criminal and civil forfeiture. The section explicitly authorizes courts to adjust forfeitures of currency involved in currency reporting offenses by considering a range of aggravating and mitigating circumstances. Those circumstances include the value of the currency or other monetary instruments involved in the offense; efforts by the person committing the offense to structure currency transactions, conceal property or otherwise obstruct justice; and whether the offense is part of a pattern of repeated violations.

Section 102. Forfeiture in Currency Reporting Cases

This section makes conforming amendments to the existing criminal and civil forfeiture provisions for the reporting and structuring violations in Title 31, to clarify that trial courts are authorized to reduce forfeitures down to the maximum level permissible to avoid violating the Eighth Amendment's Excessive Fines Clause when a statute, on its face, appears to authorize only forfeiture of the full amount of structured or unreported currency.

Section 103. Interstate Currency Couriers

This section allows law enforcement to target money couriers for terrorist organizations by making it an offense to transport more than $10,000 in criminal proceeds in interstate commerce, if the courier knows the money came from an illegal source or that it was intended to be used for an unlawful purpose. Thus, it would be an offense for a courier to pick up $10,000 in cash in New York and drive it in his car to Miami, if he knew the money was to be used to finance a terrorist act.

Section 104. Illegal Money Transmitting Businesses

The operation of an illegal money transmitting business is a violation of federal law under 18 U.S.C. § 1960. However, prosecutions under Section 1960 have been rare, because of judicial decisions suggesting that the government must prove

not only that the defendant knew the money transmitter was unlicensed and that a license was required by state law, but also that the operation of an unlicensed business is a criminal offense. This section clarifies that in prosecutions under Section 1960, the government need not establish that the defendant was familiar with the Federal statute making the operation of an unlicensed money remitter a criminal offense. The section also allows the government to obtain forfeiture of property involved in the operation of an illegal money transmitting business, even if the perpetrator is a fugitive.

Section 105. Long-Arm Jurisdiction over Foreign Money Launderers

This section amends the civil penalty provision for money laundering offenses in 18 U.S.C. § 1956(b). It gives the district court "long-arm" jurisdiction over a foreign bank that commits a money laundering offense in the United States, and authorizes the restraint of assets found in the United States that may be used to satisfy a civil judgment against such a bank.

Section 106. Laundering Money through a Foreign Bank

18 U.S.C. § 1956 makes it an offense to conduct a transaction involving a financial institution if the transaction involves criminally derived property. Similarly, 18 U.S.C. § 1957 creates an offense relating to the deposit, withdrawal, transfer or exchange of criminally derived funds "by, to or through a financial institution." This section makes a technical amendment to clarify that the definition of a "financial institution" in Sections 1956 and 1957 includes a foreign bank.

Section 107. Specified Unlawful Activity for Money Laundering

Under current law, only a limited number of foreign offenses involving drug trafficking, violence, and bank fraud are predicates for money laundering prosecutions. Recognizing the ease with which foreign criminals can transfer their proceeds to the United States, this section expands that list to include fraud, corruption, smuggling and other offenses, including crimes of violence perpetrated by terrorists.

Section 108. Laundering the Proceeds of Terrorism

The Antiterrorism and Effective Death Penalty Act of 1996 made it a criminal offense to provide material support or resources to any group designated by the Secretary of State as a "foreign terrorist organization." This statute effectively prohibits terrorist fund-raising in the U.S. by making it a crime to raise money in this country and send it abroad to a foreign terrorist organization. The 1996 law failed, however, to add the new criminal offense to the list of money laundering predicate offenses in Title 18. This is a serious omission. While it is now an offense to *raise* money for the material support of a foreign terrorist organization, it is not an offense to *launder* the money to conceal or disguise its source, location, ownership, nature or control. This section remedies this omission, by adding

material support for terrorism to the list of predicate offenses that can give rise to a money laundering prosecution.

Section 109. Violations of Section 6050I of the Internal Revenue Code

26 U.S.C. § 6050I requires any trade or business receiving more than $10,000 in cash to report the transaction to the IRS on Form 8300. Failure to file the form subjects the trade or business to civil and criminal sanctions, but not forfeiture of the property involved in the offense. This creates an inconsistency in current law, which authorizes forfeiture when a financial institution fails to file a Currency Transaction Report on a cash transaction in excess of $10,000. This section eliminates that inconsistency, by extending forfeiture to violations of 26 U.S.C. § 6050I.

Section 110. Proceeds of Foreign Crimes

This section is intended to reinforce the United States' compliance with the Vienna Convention. It amends 18 U.S.C. § 981(a)(1)(B) to allow the U.S. to institute its own action against the proceeds of foreign criminal offenses when such proceeds are found in the United States. As required by the Vienna Convention, it also authorizes the confiscation of property used to facilitate such crimes.

Section 111. Transfer of Reporting Requirements from Section 6050I of the Internal Revenue Code to Title 31

26 U.S.C. § 6050I requires trades or businesses to report cash transactions in excess of $10,000 to the IRS. Because the provision is located within the Internal Revenue Code, the required forms (Form 8300) are considered "tax return information" and thus are not made available to other law enforcement agencies conducting money laundering investigations. This section transfers the provision to title 31 without substantive change so that the forms are treated the same as other reports filed pursuant to anti-money laundering regulations, and are readily accessible to investigators from other agencies.

Section 112. Penalties for Violations of Geographic Targeting Orders and Certain Record Keeping Requirements

Under the Bank Secrecy Act, the Secretary of the Treasury has the authority to issue so-called Geographic Targeting Orders (GTOs), requiring a group of financial institutions in a specified geographic area to comply with special record-keeping and reporting requirements. Current law is silent on whether violations of GTOs can result in the imposition of civil and criminal penalties. This section contains a technical amendment that corrects that omission.

Section 113. Exclusion of Aliens Involved in Money Laundering

This section provides for the inadmissibility of any individual seeking entry to the U.S. who a consular officer has reason to believe has engaged in certain money laundering offenses, or any criminal activity in a foreign country that would

constitute such an offense if committed in the U.S., as well as the spouse, son or daughter of such persons under certain circumstances.

Section 114. Standing to Contest Forfeiture of Funds Deposited into a Foreign Bank

This section addresses the problems that arise when criminal proceeds are laundered through the correspondent accounts of foreign banks maintained in the U.S. In those situations where criminal proceeds are deposited into a dollar-denominated account overseas, and the foreign bank maintains its dollar deposits in a correspondent account at a U.S. bank, this section authorizes the seizure of the laundered funds from the correspondent account.

Section 115. Subpoenas for Records Regarding Funds in Correspondent Bank Accounts

This section requires foreign banks that maintain correspondent accounts at U.S. banks to designate a person in the U.S. to receive subpoenas for records, and authorizes the Attorney General to issue such subpoenas in forfeiture cases.

Section 116. Financial Crimes Enforcement Network

The Financial Crimes Enforcement Network (FinCEN) was created in 1990 by order of the Secretary of the Treasury to serve as the government's primary financial intelligence unit, responsible for collecting and analyzing data related to large currency transactions and other suspicious financial activity. This section codifies FinCEN's status as a Treasury bureau with separate authorization, and assigns the bureau duties consistent with those assigned currently by order of the Treasury. It also requires FinCEN to establish and maintain operating procedures designed to facilitate the prompt reporting of suspicious financial activity (in electronic format, whenever possible), and the immediate review by law enforcement of information that warrants particular scrutiny. The section mandates the creation of a unit within FinCEN specifically tasked with combating the use of informal, nonbank networks and other "underground" systems for transferring funds.

Section 117. Customs Service Border Searches

This section authorizes the U.S. Customs Service to conduct limited warrantless searches of outbound international mail when there is a reasonable suspicion that the mail contains bulk cash or other illegal contraband. The Customs Service currently has the authority to conduct such warrantless border searches in virtually every situation in which people or merchandise cross the U.S. border, including the authority to search international mail sent by private carrier, such as Federal Express or United Parcel Service. This section simply extends this authority to outbound international mail sent via the U.S. Postal Service. The provision includes safeguards prohibiting Customs inspectors from reading, copying, or seizing any correspondence without a search warrant or the written consent of the sender.

Section 118. Prohibition on False Statements to Financial Institutions Concerning the Identity of a Customer

This section makes it a Federal crime, punishable by up to 5 years in prison, to knowingly falsify or conceal a customer's true identity in a transaction with a financial institution, including a bank, securities firm, or insurance company.

Section 119. Verification of Identification

This section directs the Secretary of the Treasury to utilize already existing statutory authority to prescribe regulations requiring financial institutions to verify the identity of all persons who open and maintain accounts, and to keep records of the information used to verify such identification.

TITLE II. PUBLIC-PRIVATE COOPERATION

Section 201. Establishment of Secure Website

This section directs the Secretary of the Treasury to establish a secure website dedicated to (1) receiving electronic filings of Suspicious Activity Reports by financial institutions; and (2) providing financial institutions with alerts and other information regarding suspicious activity that warrants immediate and enhanced scrutiny.

Section 202. Report on Improvements in Data Access

This section requires the Secretary of the Treasury to report to Congress within four months from date of enactment on the government's progress in facilitating electronic submission of Suspicious Activity Reports and rapid retrieval of important information in those reports by law enforcement.

Section 203. Reports to the Financial Services Industry on Suspicious Financial Activity

This section directs the Secretary of the Treasury to disseminate quarterly reports to the financial services industry identifying and analyzing patterns of suspicious financial activity disclosed by the reports filed by the industry pursuant to the Bank Secrecy Act.

Section 204. Efficient Use of Currency Transaction Reporting System

Of the over 12 million Currency Transaction Reports (CTRs) filed annually by financial institutions, the Treasury Department estimates that some 30 percent qualify for a statutory exemption, and therefore should never have been filed in the first place. Financial institutions' failure to take advantage of the exemptions provided for under current law results in the government being inundated with millions of reports that are of no value in identifying potential money laundering or other financial crimes, thereby interfering with effective law enforcement.

This section requires the Secretary of the Treasury to report to Congress within 90 days of enactment on (1) possible expansion of the statutory exemptions to the CTR requirement available under current law; (2) methods for improving compliance by financial institutions with the exemptions; and (3) the possibility of imposing sanctions against financial institutions that routinely file CTRs that are covered by a statutory exemption.

Section 205. Public-Private Task Force on Terrorist Financing Issues

This section mandates the creation of a public-private task force, under the aegis of the Bank Secrecy Act Advisory Group, to focus on issues related to terrorist financing, including methods used to transfer funds globally and within the U.S., and to facilitate the exchange of information concerning terrorist financing between financial institutions and law enforcement organizations.

Section 206. Deadline for Suspicious Activity Reporting Requirements for Registered Brokers and Dealers

This section directs the Secretary of the Treasury to publish by no later than December 31, 2001, a proposed regulation requiring securities broker-dealers to file Suspicious Activity Reports.

Section 207. Amendments Relating to Reporting of Suspicious Activities

This section makes certain technical and clarifying amendments to 31 U.S.C. § 5318(g)(3), the Bank Secrecy Act's "safe harbor" provision, which protects financial institutions that disclose possible violations of law or regulation from civil liability for reporting their suspicions and for not alerting those identified in the reports.

Section 208. Authorization to Include Suspicions of Illegal Activity in Written Employment References

Occasionally banks develop suspicions that a bank officer or employee has engaged in potentially unlawful activity. These suspicions typically result in the bank filing a Suspicious Activity Report. Under present law, however, the ability of banks to share these suspicions in written employment references with other banks when such an officer or employee seeks new employment is unclear. This section would amend 12 U.S.C. § 1828 to permit a bank, upon request by another bank, to share information in a written employment reference concerning the possible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information.

TITLE III. COMBATING INTERNATIONAL MONEY LAUNDERING

Section 301. Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern

This section gives the Secretary of the Treasury discretionary authority to impose one or more of five "special measures" against foreign jurisdictions, financial institutions operating outside the United States, and international transactions that are determined to be of "primary money laundering concern." Those measures are: (1) additional record keeping and reporting requirements; (2) identification of beneficial ownership of accounts held by foreign persons; (3) identification of persons permitted to use a payable-through account with an institution outside the U.S.; (4) identification of persons permitted to use a correspondent account with an institution outside the U.S.; and (5) prohibition of, or imposition of conditions on, correspondent or payable-through accounts with institutions outside the U.S.

In determining whether a foreign jurisdiction is of primary money laundering concern, the Treasury is required to consult with the Secretary of State and the Attorney General, and to consider whether a jurisdiction offers bank secrecy and special tax advantages, the quality of its bank supervision and anti-money laundering laws, the volume of transactions relative to the size of its economy, and the experience of U.S. law enforcement officials in receiving cooperation from the jurisdiction.

In selecting a special measure to address a primary money laundering concern, the Treasury is required to consult with the Federal Reserve (and the Attorney General and Secretary of State in the case of the fifth special measure), and to consider whether similar steps are being taken by other countries or multilateral groups, whether the measure would competitively disadvantage U.S. institutions, and the extent to which there would be adverse effects on the international payment system and legitimate business.

Finally, this section bars U.S. banks from providing banking services, either directly or indirectly, to foreign shell banks that have no physical presence in any country. This section does not prevent a U.S. bank from opening a correspondent account for a foreign bank that is (1) affiliated with an institution that maintains a physical presence in the U.S. or a foreign country, and (2) is subject to supervision by a banking authority in the country regulating the affiliated entity.

Section 302. International Cooperation in Investigations of Money Laundering, Financial Crimes and the Finances of Terrorist Groups

This section authorizes the President to limit or bar access to the U.S. financial system by institutions in countries that refuse to exchange financial intelligence with the U.S. in connection with investigations of terrorist financing issues.

Section 303. Prohibition on Acceptance of Any Bank Instrument for Unlawful Internet Gambling

Internet gambling serves as a haven for money laundering activities. FBI representatives have told Committee staff that a huge potential exists for offshore gambling sites to be used to launder money. The FBI currently has two pending

cases involving Internet gambling as a conduit for money laundering, as well as a number of pending cases linking Internet gambling to organized crime.

This section prohibits a gambling business from accepting bank instruments in connection with unlawful Internet gambling. Covered instruments include credit cards, electronic fund transfers, and checks.

Subsection (b) defines the term "bets or wagers" as the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance with the agreement that the winner will receive something of greater value than the amount staked or risked. This subsection clarifies that "bets or wagers" does not include a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument; a contract of indemnity or guarantee; a contract for life, health, or accident insurance; a deposit with a depository institution; or certain participation in a simulation sports game or education game. The subsection also clarifies that "business of betting or wagering" does not generally include any financial intermediary (creditor, credit card issuer, insured depository institution, transmitter of an electric fund transfer, money transmitting business, or network used to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network). Subsection(b) also defines the terms "Internet" and "unlawful Internet gambling."

Subsection (c) authorizes civil remedies, including a preliminary injunction or injunction, against any person to prevent or restrain a violation of this section, including expedited proceedings in exigent circumstances. The subsection authorizes such proceedings to be brought by the U.S. Attorney General, or the attorney general of a State or other appropriate State official. The subsection clarifies that this section should not be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act. The subsection requires that, before any proceeding under this subsection is initiated against an insured depository institution, notification must be made to the appropriate Federal banking agency and such agency must be allowed a reasonable time to issue the appropriate regulatory order.

Subsection (d) authorizes criminal penalties, including fines or imprisonment for not more than five years, or both. The subsection also authorizes a permanent injunction against a person convicted under this subsection, enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

Subsection (e) provides that the safe harbor provided to a financial intermediary (creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or national, regional, or local network) under subsection (b)(2) does not apply to a financial intermediary that operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers are or may be placed, received, or

otherwise made; or is owned or controlled by any person who operates, manages, supervises, or directs such an Internet website.

Subsection (f) allows the appropriate Federal banking agency to prohibit an insured depository institution from extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service, or from paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution, where the institution has actual knowledge that a person is violating this section in connection with such activities. This subsection, in conjunction with subsections (b)(2) and (e), is intended to ensure that a financial intermediary is not held liable for a violation of this section solely based on the unknowing and unintentional involvement of the intermediary through the use of the facilities of such intermediary in an unlawful Internet gambling transaction, unless the intermediary acted as an agent of a gambling business and had: (1) actual knowledge that the specific transaction is an unlawful Internet gambling transaction; and (2) the intent to engage in the business of submitting into the payment system Internet gambling transactions prohibited by this section.

Section 304. Internet Gambling in or through Foreign Jurisdictions

This section provides that, in deliberations between the U.S. Government and any other country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering.

TITLE IV. CURRENCY PROTECTION

Section 401. Counterfeiting Domestic Currency and Obligations

This section makes it a criminal offense to possess an electronic image of an obligation or security document of the United States with intent to defraud. The provision harmonizes counterfeiting language to clarify that possessing either analog or digital copies with intent to defraud constitutes an offense. The section also increases maximum sentences for a series of counterfeiting offenses.

Section 402. Counterfeiting Foreign Currency and Obligations

This section conforms the legal prohibition on counterfeiting foreign security documents or obligations within the U.S. to that of counterfeiting U.S. security documents or obligations, and raises penalties to parity with those established in section 401.

Section 403. Production of Documents

This section allows the Secretary of the Treasury to authorize production of currency, stamps or other security documents for foreign countries if such work does not interfere with the production of such documents for the U.S. and if the Secretary of State has concurred in the production.

Section 404. Reimbursement

This section provides that the Treasury be fully reimbursed for the printing authorized in section 403, including all real, administrative and other costs, by the foreign nation for which production services are performed.